97-SBE-003

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of	)	
	)	No. 95R-0141
Yvonne M. Goodwin	)	

Representing the Parties:

For Appellant:	Yvonne M. Goodwin
For Respondent:	Jozel L. Brunett, Counsel
Counsel for Board of Equalization:	Derick J. Brannan, Tax Counsel

O P I N I O N

This appeal is made pursuant to section 19324, subdivision (a),[1] of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Yvonne M. Goodwin for refund of personal income tax in the amount of $1 or more for the year 1982.[2]

The sole issue in this appeal is whether appellant has demonstrated reasonable cause for her failure to timely file a 1982 tax return and respond to respondent's notice and demand for information thereon.

I. Factual Background:

In 1982, at the age of 12, appellant earned over $19,000 while living in California but did not file a state tax return. Appellant is now 26 years of age and still has not filed a 1982 state tax

[1]Unless otherwise specified, all section references hereinafter in the text of this opinion are to sections of the Revenue and Taxation Code as in effect for the income year in issue.

[2]Respondent stated in its brief that appellant paid a total of roughly $2,887.45 consisting of taxes ($652.00), late payment penalty ($163.00), notice and demand penalty ($163.00), collection fee ($9.00), interest on taxes ($860.03), interest on penalties ($593.52) and interest on interest ($445.90).

return.[3] On appeal, appellant seeks a refund of roughly $2,887.45 for taxes, penalties and interest paid in connection with that taxable year.

On November 28, 1983, respondent mailed a notice and demand for information (notice) requesting that appellant either file a return for 1982 or explain why she need not file such a return. Appellant failed to respond, and on October 14, 1984, respondent issued a Notice of Proposed Assessment (NPA). The NPA reflected a provisional tax liability of $652, a late filing penalty of $163, a penalty of $163 for failing to respond to the notice, (the penalties) and interest corresponding to each of these assessments.

Appellant paid the balance due from the assessment on July 19, 1994,[4] and then filed a claim for refund. Respondent denied that claim on August 29, 1994, and appellant then filed this timely appeal.

II. Legal Discussion:

Appellant contends that she should not be responsible for filing her taxes while still a minor, that her mother did not receive notice of the assessment until 1987, and that she (appellant) did not receive notice of the assessment until 1994. In essence, due to her status as a minor in 1982, appellant contends that she had reasonable cause for failing to file a timely return and for failing to respond to the notice. For the same reasons, appellant asks that this Board excuse the interest charges from the time of the initial assessment until the time that she "was first notified of this situation in June, 1994."

A taxpayer must file a tax return by April 15th following the close of the calendar year. (Rev. & Tax. Code, § 18432, renumbered as § 18566, operative Jan. 1, 1994.) Respondent may impose a penalty for the late filing of a return which may be excused only upon a showing of reasonable cause. (Rev. & Tax. Code, § 18681, renumbered as § 19131, operative Jan. 1, 1994.) Respondent may also impose a penalty if a taxpayer fails to file a return or fails to furnish information upon notice and demand by the Franchise Tax Board; this penalty may also be excused upon a showing of reasonable cause. (Rev. & Tax. Code, § 18683, renumbered as §19133, operative Jan. 1, 1994.)

While the propriety of a penalty presents a question of fact, the burden of proof is on the appellant. (Appeal of Robert E. and Argentina Sorenson, Cal. St. Bd. of Equal., Jan. 6, 1981.) Further, respondent's determination of a penalty is presumptively correct. (Appeal of Ronald Ippolito, Cal. St. Bd. of Equal., Nov. 18, 1980.) In order to overcome the presumed correctness of respondent's determination, appellant must produce credible and competent evidence in support of her contentions on appeal. (Appeal of James C. and Monablanche A. Walshe, Cal. St. Bd. of Equal., Oct. 20, 1975.)

A. Appellant's Status as a Minor:

[3]Respondent indicated in its brief that appellant still has not filed a 1982 tax return.

[4]The record indicates that appellant moved to Nevada in 1987 and then moved back to California in 1992; this absence from California appears to explain the delay between the initial notice and ultimate payment of the taxes and penalties.

Appellant contends that she should be excused from both penalties because she was only 12 years old when her 1982 tax return was due and when respondent mailed the notice. Respondent contends that appellant's parents could have filed the return and responded to the notice on appellant's behalf, and therefore, the penalties are appropriate.

For the year in question, if an individual was unable to make her return, the return had to be made by a guardian or other person charged with the care of the person or property of the taxpayer. (Rev. & Tax. Code, § 18403, renumbered as § 18503, operative Jan. 1, 1994.)

As a general rule, the responsibility for the mere filing of a tax return is a nondelegable personal duty which cannot be avoided by placing the responsibility with an agent. (Appeal of Samuel R. and Eleanor H. Walker, Cal. St. Bd. of Equal., Mar. 27, 1973.) The United States Supreme Court discussed this rule in United States v. Boyle (1985) 469 U.S. 241, and decided not to excuse penalties when the taxpayer's accountant failed to file a timely return. Of significance, the Boyle court differentiated between the effect of a taxpayer's reliance on an agent and the effect of a taxpayer's disability which might render the taxpayer unable to adhere to the required standard. (Boyle, supra, at p. 249, fn. 6.)

Respondent relies on the United States Tax Court opinion in Bassett v. Commissioner (1993) 100 T.C. 650, wherein the court discussed the Boyle footnote and upheld penalties under circumstances nearly identical to those of the instant case. In so holding, the court cleaved a distinction between an incompetent person who does not have a guardian, and a minor who has a guardian otherwise required by statute to file a return on the minor's behalf. (Bassett, supra, at p. 659.) Because the taxpayer's parents in Bassett were fully capable of filing a return and were also required to do so pursuant to the applicable federal statute, the reasonable cause determination focused on the parents' conduct. (Bassett, supra, at p. 659-660.) Applying the Bassett rationale to the instant case, respondent argues that there is no evidence of reasonable cause as to appellant's parents and therefore the penalties should not be excused.

Respondent fails to discuss the only Board of Equalization opinion which touches on this issue. In the Appeal of Marguerite Langtry, decided by this Board on December 13, 1960, we held that an unemancipated child living at home was entitled to rely on her parents for advice as to whether she should file a return; therefore, penalties for failing to file a return were not imposed.[5] Unfortunately, the Langtry decision does not contain any significant factual or legal analysis; further, our predecessors drafted that opinion without the benefit of the more recent decisions in Boyle and Bassett.

We find the Bassett rationale to be persuasive on the facts of this case and overrule the Langtry decision to the extent it sets forth an absolute rule regarding the imposition of penalties on a minor taxpayer.[6] We reach this conclusion for a number of reasons. First, Langtry provides too many

[5] We note that Ms. Langtry's parents were also before this Board on that same date and were assessed penalties for similar transgressions. (See Appeal of Joseph W. and Elsie M. Cummings, Cal. St. Bd. of Equal., Dec. 13, 1960.)

[6] Although we are not bound by federal court decisions, when they construe similar code sections and/or similar arguments, they are "highly persuasive" of the results to be reached by the Board of Equalization. (Appeal of

opportunities for abuse, particularly in a state so populated with child actors represented by savvy agents. Second, when the state legislature designates an agent to file a return, it would clearly undermine their intent if we excuse penalties when the agent fails to fulfill his or her obligation.[7] Third, and perhaps more importantly, we cannot fully evaluate appellant's claims because we have little or no information concerning her particular situation during the subject tax year. Information which would be helpful in that regard includes the taxpayer's family situation, the taxpayer's earnings history (both prior and subsequent to the subject tax year), the pertinent income source and any other evidence which might enhance our understanding of both the taxpayer and the guardian. Absent such information, we hold that appellant's age alone does not establish reasonable cause to excuse the imposition of penalties.

B. Appellant's Alleged Lack of Notice:

Appellant also contends that neither she, nor her mother, received the notice and therefore she should not be required to pay penalties for failing to respond to that notice. According to respondent's evidence, it mailed the notice to appellant's last known address in Saugus, California, and the notice was not returned by the postal service. A notice is valid when mailed to the taxpayer's last known address as reflected on the respondent's records. (Appeal of Jon W. and Antoinette O. Johnston, Cal. St. Bd. of Equal., Oct. 26, 1983; Appeal of W. L. Bryant, Cal. St. Bd. of Equal., Aug. 17, 1983.) While appellant argues that she did not receive the notice, she does not argue that she lived at some other location during the relevant time period. In fact, appellant's statement is the only evidence which supports her claim that she never received the notice. Such minimal evidence, does not establish reasonable cause and is insufficient to meet appellant's burden of proof. (Appeal of Eugene C. Findley, Cal. St. Bd. of Equal., May 6, 1986; Appeal of Johnston, supra.)

C. Request for Waiver of Interest:

Appellant also asks that this Board excuse payment of interest due to her tender years. California imposes interest on taxes and penalties. (Rev. & Tax. Code, §§ 18688 and 18689, renumbered as §§ 19104 and 19106, respectively, operative Jan. 1, 1994.) Unlike penalties, respondent may not excuse interest upon a showing of reasonable cause. The different treatment arises because interest does not represent a penalty; rather, it represents compensation for the use of money. (Appeal of Emil and Melvene B. Neeme, Cal. St. Bd. of Equal., June 10, 1986.) In this case, regardless of appellant's age, she obviously had use of the money and therefore the interest charge is appropriate. Further, while we do not address any question concerning our statutory authority to abate interest;[8] it is clear that the interest charge in this case did not occur for any of the reasons which otherwise might allow respondent to excuse that portion of the refund claim.[9]

(..continued)

Sheldon and Marion Portman, Cal. St. Bd. of Equal., Mar. 1, 1983; see also Rihn v. Franchise Tax Board (1955) 131 Cal.App.2d 356, 360.)

[7] We think it is unfortunate that a minor taxpayer may suffer for the transgressions of her parents. However, should we rule otherwise, it would be far too easy to deliberately avoid filing tax returns knowing that the state will assess only interest, and not penalties, if the derelict taxpayer is ever discovered. Further, we do not address the potential for a civil suit against one's guardian for a breach of the duty imposed by Revenue and Taxation Code section 18403 (renumbered as section 18503, operative January 1, 1994).

[8] See Appeal of Philip C. and Ellen Boesner Snell, 92-SBE-023, July 30, 1992, and Appeal of Nicholas Schillace, 95-SBE-005, Aug. 2, 1995.

[9] Respondent has discretionary authority to abate interest stemming from a ministerial act on behalf of respondent, the issuance of an erroneous refund, reliance on written advice, or which can not be repaid due to financial hardship.

III. Conclusion:

Based on the aforementioned facts and applicable legal authorities, respondent's determination is hereby sustained.

(..continued)
(Rev. & Tax. Code §§ 19104, subd. (c)(1) and (c)(2), and 19112, formerly §§ 18688 and 18693, respectively, and § 21012.)

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, pursuant to section 19333 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Yvonne M. Goodwin for refund of personal income tax in the amount of $1 or more for the year 1982 be and the same is hereby sustained.

Done at Sacramento, California, this 19th day of March, 1997, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Klehs, Mr. Andal, Mr. Halverson and Mr. Chiang present.

_____, Chairman

Johan Klehs , Member

_____, Member

Rex Halverson* , Member

John Chiang** , Member

*For Kathleen Connell, per Government Code section 7.9.
**Acting Member, 4th District.